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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1055 85

CARL HALL, INDIVIDUALLY AND IN HIS OWN BEHALF, AND FOR AND ON BEHALF OF ALL OTHER COAL MINERS AND CLAIMANTS SIMILARLY SITUATED, AND DISTRICT NO. 30, UNITED MINE WORKERS OF AMERICA,

Petitioners,

vs.

V. E. BARNES, OMER C. STUBBS AND JOHN C. C. MAYO, JR., MEMBERS OF THE UNEMPLOYMENT COMPENSATION COMMISSION OF KENTUCKY, AND THE UNEMPLOYMENT COMPENSATION COMMISSION OF KENTUCKY.

PETITION FOR CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF KENTUCKY AND BRIEF IN SUPPORT THEREOF.

JOHN Y. BROWN,
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Counsel for Petitioners.

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PETITION FOR CERTIORARI TO THE KENTUCKY COURT OF APPEALS.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners pray this Court and the above-named Chief Justice and the Associate Justices thereof, for a writ of certiorari to review a decision of the Kentucky Court of Appeals, which reversed a decree of the Letcher County,

Kentucky, Circuit Court, and in support of this, their petition, they respectfully state and show as follows:

1. That the claims of your petitioners arose and grew out of the following facts and laws:

(a) That at its regular session in 1938 the General Assembly of the Commonwealth of Kentucky duly enacted a statute, repealing what was at that time Sections 4748f-1 to 4748f-24, inclusive, of the Kentucky Statutes. The 1938 Act is now known as the "Unemployment Compensation Law," embodying Sections 4748g-1 to 4748g-22, inclusive, of the present official Kentucky Statutes.

(b) Section 4748g-2, Kentucky Statutes, declares that the public policy of the State is the achievement of social security. It is declared further, in substance, that the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus in a measure thwarting the evils that follow involuntary unemployment, is the one means of accomplishing such security. It is stated that the systematic accumulation of funds during periods of unemployment can provide benefits to be furnished those who subsequently have no work.

(c) It is further declared under the latter section that this Act is enacted as a part of the national plan of unemployment compensation and social security.

(d) Section 4748g-7 (b) provides for the payment by each subject employer of a certain percentage of the wages payable by him with respect to covered employment, and subsection d (1) thereof provides for the payment by the employee of one per centum of his wages to the Unemployment Commission.

(e) Section 4748g-14, Kentucky Statutes, creates an "unemployment insurance fund," which consists of, inter alia,

all contributions and moneys collected under this Act. Subsection b (3) of said section provides that, after certain deductions should they become necessary, all moneys in the designated "clearing account" shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended.

(f) Section 4748g-9 (1), (2), (3), (4), (A), (B), (C), (D), (5), Kentucky Statutes, sets forth the basis for the establishment of a claimant's eligibility for compensation thereunder. Subsection (b), (1), (2), (3), (A), (B), (C), (4), (5), (6), (B), (C), (7), thereof enumerates the causes for the denial of benefits under the Act.

(g) That Section 4748g-11, Kentucky Statutes, provides for the steps to be taken by the claimant for benefits for the enforcement of the collection of his claim for compensation.

(h) That in March, 1939, at a joint conference, known as the "Appalachian Conference" held in New York, the representatives of the United Mine Workers of America, a national labor union, representing the petitioners herein, and representing the vast majority of the miners in the coal industry in the State of Kentucky and those of other States, and as their exclusive bargaining agency, met with the representatives of the coal operators for the State of Kentucky and those of other States, embodying the bituminous coal area, for the purpose of entering into a new contract of employment for the ensuing two years, beginning April 1, 1939 and ending March 31, 1941, the then existing contract was to expire on March 31, 1939. For years past such biennial agreements had been written at these conferences. The

agreement, which is the outgrowth of this conference, is known as the "Appalachian Agreement."

(i) That at the first meeting of the Appalachian conference on March 15, 1939, a resolution was introduced by the committee representing the United Mine Workers of America, which, in the identical language, is as follows, to-wit:

> "In order to allay any public apprehension concerning the possibility of a suspension of mining operations in the bituminous coal industry due to the expiration of the existing wage agreement, this Joint Conference
>
> "RESOLVES, that in the event no agreement is reached by March 31, 1939, that work in the industry shall be continued under the existing wages, conditions and contracts pending continuance of negotiations and ultimate success or failure to agree on a new contract."

This resolution was voted down by the operators (R. 86-87).

(j) That on the last day before the cessation of work under the terms of the then existing agreement, the United Mine Workers of America offered a motion before the Conference to extend the existing contract until October 1, 1939, to which the operators voted their disapproval and the representatives of the miners their approval (R. 87).

(k) That the failure of the Appalachian Conference to agree upon a new contract of employment resulted in the unemployment of the petitioner, Carl Hall, and all those miners similarly situated and represented at the said conference. The petitioners remained out of work during the negotiations at this conference from the date of the expiration of said agreement, to-wit: April 1, 1939, until the execution of a new contract on May 12, 1939.

(l) That your petitioner, Carl Hall, individually and in his own behalf, and for and on behalf of all other coal miners

and claimants similarly situated, filed their petition with the Unemployment Compensation Commission of Kentucky, seeking payment of their unemployment benefits for the period they remained out of work.

(m) That, as provided for under the Act, a hearing was had before an examiner appointed by the Unemployment Compensation Commission to determine their merits, and at this hearing the claims of your petitioners were opposed by the various coal operators and were ultimately disallowed (R. 197). As provided for, the decision of the examiner was appealed to a referee who, in turn, affirmed the Examiner's findings (R. 216-220). The Commission then affirmed the latter's decision. An appeal was duly taken by your petitioners to the Circuit Court of Letcher County, Kentucky, in accordance with the procedure set forth in the Act (R. 2-8).

(n) That the respondents, the Kentucky Unemployment Commission, and the various coal operators opposed the claims in said Circuit Court (R. 12), and contended that the lack of employment upon the part of petitioners was due to the failure of the Appalachian Conference to agree upon a new contract and, therefore, that a labor dispute existed between the representatives of the various parties, and urged that the claims were not compensable under Section 4748g-9 (b), (4), Kentucky Statutes, which provides thus:

> "If he has left (or partially or totally lost) his employment with an employer because of a strike or other bona fide labor dispute, for any week in which such strike or other bona fide labor dispute is in active progress in the establishment in which he is or was employed, provided that for the purposes of this subsection a lock-out shall not be deemed a strike or a bona fide labor dispute and no worker shall be denied benefits by reason of a lock-out" (R. 63).

2. That there thus arose between the petitioners and the respondents a controversy as to whether the miners, who remained idle for the weeks pending the negotiations at said conference preparatory to the ultimate execution of a new contract, were entitled to compensation under the Act, or whether they were to be denied benefits thereunder because of the disqualifying provisions of the Act, denying payment in those instances where lack of employment was due to a labor dispute.

3. That said cause and controversy was heard by the Letcher Circuit Court, and on February 17, 1940, a judgment was entered declaring that there existed no labor dispute and reversing the decision of the Commission, and directing it to pay your petitioners (R. 66).

4. That thereafter, respondents prosecuted an appeal from said decree to the Court of Appeals of Kentucky (R. 1-2), and on December 20, 1940, said appellate court handed down its opinion, which reversed the decree of the Letcher Circuit Court (R. 276-293). In due time your petitioners filed in said appellate court their petition for a rehearing (R. 293), and on February 14, 1941, this petition for rehearing was denied (R. 306), and a decree was duly entered by said appellate court reversing the decree of the Letcher Circuit Court.

5. That your petitioners are advised and state that said judgment and decree of reversal had and entered in said appellate court is final and is erroneous; that they respectfully submit that this Honorable Court and the Chief Justice and Associate Justices thereof should require, and that your petitioners are entitled to have, this case and the said decision therein certified to it for its review and for a decision and determination by this Honorable Court under the Act of Congress permitting and providing for certiorari for such review.

6. That the reasons produced and asserted by your petitioners upon which they invite a review in this Honorable Court are as follows, to-wit:

(a) That the said judgment of the appellate court deprives the petitioners of their right granted under Chapter 7 of the National Labor Relations Act of the United States of America, 29 U. S. C. A., section 151, 49th Statutes, 449.

(b) That the said decision of the appellate court involves principles not heretofore settled by this Court, but "the settlement of which is of importance to the public as distinguished from that of the parties," which, in the case of *Layne and Bowler Corporation* v. *Western Works,* 261 U. S. 387, 67 L. Ed. 712, is declared by this Court to be a proper and appropriate ground for the granting of the writ herein sought.

(c) That the judgment of the appellate court deprives the petitioners of a property right possessed under the terms of the Social Security Act of the United States of America and the Kentucky Unemployment Compensation Act without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States.

7. That your petitioners, by briefs and oral arguments at the original hearing before the Kentucky Court of Appeals, and later by their petition for a rehearing, presented to the Court of Appeals their contention that the said appellate court, by its interpretation of what constitutes a "labor dispute," as used in the Unemployment Compensation Act, nullified the full purpose and intent of a portion of the Social Security Act as enacted by Congress, and is repugnant to Title 42, U. S. C. A., section 1103 (a) (5) (a) of the Federal Act (R. 293).

8. That your petitioners did further plead in their petition for a rehearing before the appellate court that the

judgment of that court in denying compensation deprived the petitioners of their rights guaranteed under the National Labor Relations Act of the United States of America, 29 U. S. C. A., section 151, 49th Statutes, 449 (R. 293).

9. Your petitioners set forth in their petition for a rehearing the further cause for a reversal of said judgment by the appellate court, that its judgment deprives them of a property right possessed under the terms of the Social Security Act of the United States of America and the Kentucky Unemployment Compensation Act, without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States (R. 293).

10. The Unemployment Trust Fund created by the Federal Social Security Act, held by the United States of America, and administered by it in conjunction with the several States, makes the payment or non-payment of benefits therefrom a Federal question, and renders the decision of a State court, with reference thereto, subject to review by this Honorable Court.

11. That the appellate court overruled the said petition for a rehearing and the points therein contained by your petitioners on February 14, 1941 (R. 306). This petition is presented within the time allowed by law.

12. The questions here presented were presented to the Court of Appeals of Kentucky in their petition for rehearing (R. 293). The ruling of the Court of Appeals could not be anticipated and the questions were raised at the first opportunity.

13. That your petitioners, under the same cover with this petition, duly present their brief and argument in support of the granting of the writ herein sought.

14. That there is filed in the office of the Clerk of this Honorable Court, to support this petition, a duly certified transcript of the record and all of the proceedings in this cause in the Court of Appeals of Kentucky.

WHEREFORE, these, your petitioners, respectfully pray that a writ of certiorari be duly issued by this Honorable Court, whereby and whereunder and to the end that this cause may be reviewed and determined by this Honorable Court as is by law provided; that the said judgment of the Court of Appeals of Kentucky be reversed on said review, and for all other relief proper in the premises.

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